

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
CASE NO. 5:22-cv-68-BO

YOLANDA IRVING, individually and as the)
natural parent and guardian of J.I, JUWAN)
HARRINGTON, CYDNEEA HARRINGTON,)
KENYA WALTON, individually and as the)
natural parent and guardian of R.W., ZIYEL)
WHITLEY, DYAMOND WHITLEY,)
KAMISHA WHITLEY, NANETTA GRANT)
as the natural parent and guardian of Z.G., and)
EMANCIPATE NC, INC.,)

Plaintiffs,

v.

THE CITY OF RALEIGH, Officer OMAR I.)
ABDULLAH, Sergeant WILLIAM ROLFE,)
Officer RISHAR PIERRE MONROE,)
Officer MEGHAN CAROLINE GAY,)
Officer DAVID MEAD, Officer JESUS)
ORTIZ, Officer, KYLE PERRIN, Officer)
MICHAEL MOLLERE, Officer KYLE)
THOMPSON,)
Officer VINCENT DEBONIS, Officer)
DANIEL TWIDDY, Officer THOMAS WEBB,)
Officer DAVID MCDONALD, Officer DAVID)
GARNER, Chief of Police ESTELLA)
PATTERSON, and City Manager MARCHELL)
ADAMS-DAVID, in their official capacities,)

Defendants.

**CONSENT MOTION TO
EXTEND DISCOVERY
DEADLINES RELATED TO
PLAINTIFFS' CLAIMS OF
PSYCHOLOGICAL INJURY**

Pursuant to Federal Rule of Civil Procedure 6(b), and the Court's inherent powers, Defendants move, with the consent of Plaintiffs, for entry of an order extending by 180 days the deadlines (1) for Defendants' Phase I Rule 26(a)(2) disclosures ("expert

disclosures”) related to Plaintiffs’ claims of psychological injury; and (2) for expert discovery related to Plaintiffs’ claims of psychological injury. With this motion, Defendants do not seek extension of any other Phase I deadlines. In support of this motion, Defendants show the Court the following:

1. Plaintiffs filed this action on February 22, 2022. [DE 2](#).
2. Plaintiffs twice amended their complaint. [DE 41](#), [93](#). After the second amendment, this litigation now includes 11 plaintiffs and 17 defendants.
3. Discovery has been bifurcated, with Phase I discovery relating to the claims against the Individual Defendants, and Phase II discovery relating to the claims against the City of Raleigh and Official Capacity Defendants. [See DE 69](#).
4. On July 6, 2022, the Court entered a scheduling order setting the deadline for completion of Phase I discovery as December 20, 2022. [DE 69](#).
5. Plaintiffs claim psychological injury as damages.
6. Defendants, on July 29, 2022, requested in discovery all pharmacy and medical records for Plaintiffs. Plaintiffs did not produce any medical records until more than five months later, on January 4, 2023. Plaintiffs have now made several productions of medical records, which Defendants maintain are not complete or substantially complete.
7. In November 2022, however, Plaintiffs produced reports by psychologist Dr. Mary Anne Etheridge, opining on psychological injury allegedly suffered by several Plaintiffs. Counsel for Defendants conducted depositions of these Plaintiffs, and other Plaintiffs, also in November.

8. On November 16, 2022, pursuant to a joint motion by the parties, the Court entered an order extending the deadline for completion of Phase I discovery until February 1, 2023, and extending related deadlines by thirty days. See DE 139, 140.

9. Throughout this time, the parties have been proceeding to timely complete discovery. Among other things, the parties have exchanged thousands of pages of written discovery materials and conducted numerous depositions, including the depositions of eight of the individual plaintiffs, five of the individual defendants, and one third party. The parties have also met and conferred in efforts to resolve discovery disputes.

10. However, on December 30, 2022, largely because Plaintiffs had not yet produced any medical records in this matter, Defendants filed a Consent Motion to Extend Discovery Deadlines by thirty days, which was granted, and which extended the deadline for Defendants' expert disclosures until February 1, 2023, and the close of Phase I discovery until March 3, 2023. See DE 155, 156.

11. This motion seeks an additional extension of the discovery deadlines specifically related to Plaintiffs' claims of psychological injury because Plaintiffs still have not produced complete or substantially complete medical records. Because complete or substantially complete medical records are necessary for Defendants to obtain expert review of the Plaintiffs' claims of psychological injury, and because expert review, itself, cannot be done in a matter of weeks, Defendants reasonably require additional time to disclose expert witnesses who will opine on the claims of psychological injury and to related expert discovery.

12. Accordingly, Defendants respectfully request the following:

- (1) A 180-day extension of the deadline to disclose experts retained to opine on Plaintiffs' claims of psychological injury, which deadline is currently Wednesday, February 1, 2023. With the requested extension, the deadline for such expert disclosures will be Monday, July 31, 2023.
- (2) A 180-day extension of the deadline to conduct expert discovery related to Plaintiffs' claims of psychological injury, which deadline is currently March 3, 2023 (the deadline for completion of Phase I discovery). With the requested extension, the deadline for expert discovery related to Plaintiffs' claims of psychological injury will be Wednesday, August 30, 2023.

13. Defendants are not seeking further extension of any other Phase I deadlines in this matter, including the February 1 deadline for disclosure of defense experts on matters other than Plaintiffs' claims of psychological injury; the March 3 deadline for Phase I discovery on matters other than Plaintiffs' claims of psychological injury; the March 31 deadline for Phase I dispositive motions; and the March 8 deadline for commencing mediation.

14. The deadlines for which extension is requested have not yet passed.

15. The extension requests are made in good faith and not for the purpose of delay.

16. Counsel for Defendants have consulted with counsel for the Plaintiffs who consent to the extensions requested in this motion.

17. For the reasons set forth above, good cause is shown for the requested extensions.

WHEREFORE, Defendants respectfully request that the Court enter an order extending the Phase I discovery deadlines in this matter as follows:

- (1) Defendants' Phase I Rule 26(a)(2) disclosures related to experts retained to opine on Plaintiffs' claims of psychological injury shall be made by Monday, July 31, 2023.
- (2) Expert discovery related to Plaintiffs' claims of psychological injury shall close on Wednesday, August 30, 2023.

Respectfully submitted,

This the 30th day of January, 2023.

/s/ Leslie C. Packer

Leslie C. Packer
N.C. State Bar No. 13640
Michelle A. Liguori
N.C. State Bar No. 52505
ELLIS & WINTERS LLP
P.O. Box 33550
Raleigh, North Carolina 27636
Telephone: (919) 865-7000
Facsimile: (919) 865-7010
leslie.packer@elliswinters.com
michelle.liguori@elliswinters.com

Counsel for SEU Officer Defendants

/s/ Dorothy V. Kibler

Dorothy V. Kibler
Amy C. Petty
City of Raleigh
PO Box 590
Raleigh, NC 27602
Dorothy.kibler@raleighnc.gov
Amy.petty@raleighnc.gov
*Counsel for Defendants City of
Raleigh, Chief of Police Estella
Patterson, and City Manager Marchell
Adams-David*

/s/ Jason Benton

Jason Benton

Jessica Dixon

Parker Poe Adams & Bernstein, LLP

620 South Tyson Street, Suite 800

Charlotte, NC 28202

jasonbenton@parkerpoe.com

jessicadixon@parkerpoe.com

Counsel for Defendant Abdullah

/s/ Rodney Pettey

Rodney Pettey

Alayna Poole

Yates McLamb & Weyher, LLP

PO Box 2889

Raleigh, NC 27602

rpettey@ymwlaw.com

apoole@ymwlaw.com

*Counsel for Defendants Monroe,
Rattelade, and Gay*

/s/ Norwood Blanchard, III

Norwood Blanchard, III

Crossley McIntosh Collier, & Edes,
PLLC

5002 Randall Parkway

Wilmington, NC 28403

norwood@cmclawfirm.com

Counsel for Defendant Rolfe

CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2023, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which sends notification of such filing to all counsel of record as follows:

Abraham Rubert-Schewel
Tin Fulton Walker & Owen, PLLC
119 E. Main Street
Durham, NC 27701
schewel@tinfulton.com
Counsel for Plaintiffs

Emily Gladden
Tin Fulton Walker & Owen, PLLC
204 N. Person Street
Raleigh, NC 27601
egladden@tinfulton.com
Counsel for Plaintiffs

Michael Littlejohn, Jr.
Littlejohn Law, PLLC
PO Box 16661
Charlotte, NC 28297
mll@littlejohn-law.com
Counsel for Plaintiffs

Ian Mance
Elizabeth Simpson
Emancipate NC, Inc.
ian@emancipatenc.org
elizabeth@emancipatenc.org
Counsel for Plaintiffs

/s/ Leslie C. Packer
Leslie C. Packer
Michelle A. Liguori

Counsel for SEU Officer Defendants